IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2100 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAGRUTIBEN K.CHAVDA & 4 - Petitioner(s)
Versus
COLLECTOR - Respondent(s)

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Appearance :
MR RC KAKKAD for Petitioner
MR AY KOGJE, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/11/2006

ORAL JUDGMENT

1. Mr. R.C. Kakkad, learned counsel for the petitioners. Mr. A.Y. Kogje, learned AGP for the respondent.

2. Present petition raises a short dispute based on the principles of natural justice.

3. The petitioners, who are pavement dwellers are occupying some of the govt. land and are earning their livelihood. According to the petitioners, they are socially backward and not properly educated, however, they are citizens of India. It is submitted by the petitioners that on 10.2.93, the government made a resolution to the effect that the land in possession of the petitioners or people alike within Jamnagar city limits be allotted and settled in their names. The Collector, Jamnagar, by his order dated 30th March, 1994 regularised the encroachments and settled the land in favour of each of the petitioner for a period of 30 years. In accordance with the government resolution dated 10.2.93, Jamnagar Municipality also decided to regularize the encroachments and started collecting necessary fees in respect of the property so settled in favour of the petitioners.

4. On 15.3.95, a news item was published in the

daily newspapers that the Collector had cancelled/recalled his order dated 30th March, 1994. The petitioners, being aggrieved by the said order as reported by the press reporters filed the present petition on various grounds, one of them is that no notice was issued to the petitioners and no opportunity of hearing was afforded to them and the order was passed in violation of principles of natural justice.

5. Subsequent to filing of the petition, the petitioners made an amendment in the writ application, raised various submissions and also annexed copy of the order dated 14.3.95 passed by the Collector in case No. Jamin[land]/2/ 441/95.

6. Shri Kakkad, learned counsel for the petitioners submits that the order passed by the Collector is contrary to all canons of justice, it violates principles of natural justice and such order, without hearing or at least notice to the petitioners could not be made.

7. Shri A.Y. Kogje, learned AGP for the respondent supports the order.

8. From the order dated 14.3.95, it does not appear that any notice was issued to the petitioners or any opportunity of hearing was afforded to them. The notice of the petitioner was served upon the State Government in the year 1995 itself, but till date, the State has not filed any counter-affidavit nor Collector has submitted his say before this Court.

9. As nobody challenges the submissions made by the petitioners on oath that the land was settled in their favour and the order was recalled without any opportunity of hearing to them, I have no reason to hold that the petitioners were given any opportunity of hearing by the Collector before issuance of the order dated 14.3.95.

10. As the order dated 14.3.95 passed by the Collector is in the teeth of law and runs contrary to the principles of natural justice, it cannot be allowed to stand, it deserves to and is accordingly quashed.

11. It is, however, made clear that if the Collector wants to continue with the proceedings or make an inquiry, then, he would be obliged

to issue notice to each of the petitioner and after hearing the parties, shall pass a speaking order. Let a copy of this order be sent by the Registry to the concerned Collector.

12. The writ application is allowed. Rule is made absolute. No costs.

[R.S. GARG, J.]

pirzada/-